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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14

15 SHELDON LOCKETT,

16 Plaintiff,

17 v.
18

19 COUNTY OF LOS ANGELES, et al.,

20 Defendants.
21

Case No.: 2:18-cv-5838-DSF-JPR

**DECLARATION OF JOHN E.
SWEENEY IN SUPPORT OF
MOTION *IN LIMINE* NUMBER 3
TO EXCLUDE DEFENDANTS'
EXPERT WITNESS DARRYL
ZENGLER**

*Filed concurrently with the Notice of
Motion and Memorandum of Points
and Authorities; lodged concurrently
with Proposed Order*

22 Pre-Trial Conference: Nov. 15, 2021
23 Time: 3:00 p.m.

24 Trial: December 14, 2021
25 Time: 8:30 a.m.

26 Judge: Hon. Dale S. Fischer
27 Courtroom: 7D
28 First Street Courthouse
350 West 1st Street
Los Angeles, CA

1 I, John E. Sweeney, declare as follows:

2 1. I am an attorney admitted to the United States District Court for the
3 Central District of California, and duly licensed to practice law in California. I am a
4 principal at The Sweeney Firm, co-counsel of record for Plaintiff Sheldon Lockett.

5 2. I have personal knowledge of the facts set forth herein, except as to those
6 stated on information and belief, and as to those, I am informed and believe them to
7 be true. If called as a witness, I could and would testify to the contents of this
8 declaration.

9 3. I am informed and believe that each and every fact set forth in Plaintiff's
10 Motion *in Limine* Number 3 To Exclude Defendants' Expert Witness Darryl Zengler
11 is true and correct and based on my review of the evidence as adduced during
12 discovery in this case. As set forth in the memorandum of points and authorities, I
13 consulted with Marianne Inouye in late May, 2020 regarding my strategy in the
14 litigation, the experts I intended to retain, a candid assessment of the strengths and
15 weaknesses of Plaintiff's case, and the expected defenses from the defendants—the
16 kind of confidential information that I would consider to be attorney work product.

17 4. I had also worked with Ms. Inouye before on other cases. Based on my
18 work-product discussions with her, I believe that she had a basic understanding of my
19 *modus operandi*, patterns of operations, decision-making process, and the like. Based
20 on my prior work with her, I felt comfortable sharing my thought process, strategy
21 and my plan for demonstrating how biased defendant Aldama was, never imagining
22 that the defendants would subsequently engage her partner.

23 5. Attached hereto as Exhibit 1 is a true and correct copy of pertinent
24 portions of the transcript of the deposition of Defendants' expert witness Darryl
25 Zengler, taken on October 14, 2021.

26 6. We elected to retain another forensic economist, Ed Garcia, and timely
27 designated Mr. Garcia in our initial expert designation on June 10, 2020. When Mr.
28 Zengler was designated by the defense as a rebuttal expert on July 29, 2020, Steven

1 Glickman, co-counsel for plaintiff , and I had an email exchange with defendants’
2 counsel Rickey Ivie on July 29, 2020 and July 30, 2020. A true and correct copy of
3 this email exchange is attached as Exhibit 2. Among other things, without disclosing
4 the content of my work product conversation with her, I had advised that my
5 discussion with Ms. Inouye was hardly “insignificant”. In that email, we put
6 defendants on notice that we intended to move to exclude Mr. Zengler

7 7. Plaintiff met and conferred with opposing counsel pursuant to Local
8 Rules 7-3 and 16-2 via a Zoom video conference on October 20, 2021 following
9 Plaintiff’s letter of October 15, 2021 setting forth the grounds for Plaintiff’s
10 anticipated motions *in limine*. The parties were unable to reach an agreement and,
11 accordingly, Plaintiff now brings this motion.

12 8. I declare under penalty of perjury under the laws of the United States of
13 America and the State of California that the foregoing is true and correct.

14 Executed this 26th day of October 2021, at Beverly Hills, California.

15
16 By /s/ John E. Sweeney
17 John E. Sweeney
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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SHELDON LOCKETT; MICHELLE)
DAVIS; AND CLYDE DAVIS,)

PLAINTIFFS,)

vs.)

CASE NO.
18-CV-5838-DSF-JPR

COUNTY OF LOS ANGELES, A)
PUBLIC ENTITY; LOS ANGELES)
SHERIFF'S DEPARTMENT, A LAW)
ENFORCEMENT AGENCY; SHERIFF)
JIM MCDONNELL; MIZRAIN ORREGO,)
A DEPUTY LOS ANGELES COUNTY)
SHERIFF; SAMUEL ALDAMA, A)
DEPUTY LOS ANGELES COUNTY)
SHERIFF; AND DOES 1 THROUGH)
100, INCLUSIVE,)

DEFENDANTS.)

VIDEOCONFERENCE DEPOSITION OF
DARRYL ZANGLER, MA, CEA
THURSDAY, OCTOBER 14, 2021

JOB NO: 4834151
REPORTER: JESSICA N. NAVARRO, C.S.R. NO. 13512

1 DARRYL R. ZANGLER, 02:03

2 having been duly administered an oath by the
3 reporter, was examined and testified as follows:

4

5 EXAMINATION 02:03

6 BY MR. GLICKMAN:

7 Q Would you please state your full name for
8 us?

9 A Darryl Zengler.

10 Q And Mr. Zengler, where do you work? 02:03

11 A I work in Pasadena, California.

12 Q What's the name of your company?

13 A Zengler and Inouye.

14 Q Who's Inouye?

15 A Yes. 02:03

16 Q Who is Inouye?

17 A Oh, Marianne Inouye.

18 Q What sort of procedures do you have to
19 avoid conflicts on cases?

20 A We have Microsoft Access. 02:03

21 Q And tell me how the process works, how do
22 you avoid a conflict?

23 A Yeah, when we accept a case, it is

24 inputted into a database. And then if she were to

25 be called on that case, she would enter it into the 02:04

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1 database to see if we've been retained by another 02:04
2 party.

3 Q Let me give you this hypothetical. A
4 lawyer calls Ms. Inouye to inquire about working on
5 a case, shares details about the case, including the 02:04
6 lawyer's thoughts and impressions and ideas of how
7 your company could be of use. How is that inputted
8 into your system?

9 A Well, it wouldn't be. I don't know if
10 that would be memorialized in any fashion. 02:04

11 Q And why is that? After a lawyer calls,
12 shares his thoughts and opinions and ideas about the
13 case, why would that not be entered into your system
14 to prevent a situation where you are contacted on a
15 case where a lawyer has shared his thoughts, 02:05
16 impressions and work product ideas with Ms. Inouye?

17 A Well, because usually an intake phone call
18 doesn't include very much detail.

19 Q Okay. So, the situation where a lawyer
20 calls, speaks with Ms. Inouye and discusses the case 02:05
21 and discusses the lawyer's thoughts, impressions and
22 ideas of how your firm can be of -- of good
23 utilization for the case, wouldn't you agree that
24 that creates a conflict then that if you were
25 retained on the case after Ms. Inouye had that sort 02:05

1 of conversation with the lawyer seeking to retain 02:05

2 her on the very same case?

3 MR. PONGRACZ: Objection; calls for

4 speculation, incomplete hypothetical, calls for a

5 legal conclusion. 02:06

6 THE WITNESS: And it's vague and

7 ambiguous.

8 I don't know the degree of information

9 that you're talking about. If Ms. Inouye received

10 any information, she didn't share it with me. 02:06

11 BY MR. GLICKMAN:

12 Q Okay. Well, I understand that's what

13 you're telling us and you have an honest face,

14 despite the little beard thing there, but you still

15 have an honest face. 02:06

16 And I'm just trying to see because I'm

17 pretty sure that if somebody called a lawyer and

18 shared all their thoughts or shared thoughts about

19 the case and what the case was about and what they'd

20 like to retain the lawyer on and then the other side 02:06

21 called the same firm and retained a lawyer on the

22 same firm, then that firm would then be conflicted

23 out of the case because of that initial contact.

24 I'm just trying to see if there's some

25 difference in the forensic economist world? 02:07

1 A Well, I don't know. 02:07

2 MR. PONGRACZ: Objection; assumes facts --

3 excuse me -- objection; lacks foundation, calls for

4 speculation. Go ahead, sir.

5 THE WITNESS: Yeah, I can't speak to what 02:07

6 you're talking about.

7 All I know is based on my general

8 experience from 36 years in this business when an

9 attorney inquires as to whether or not we would like

10 to work on a matter, that attorney presents the name 02:07

11 of the case and basically, you know, who the parties

12 are and what kind of valuation is being sought.

13 That means, you know, as you know most of our work

14 is broken bones and dead bodies. So, you know, we

15 get a sense as to whether or not it's a personal 02:08

16 injury or a wrongful death case.

17 BY MR. GLICKMAN:

18 Q What professional organizations do you
19 belong to?

20 A I belong to the National Association of 02:08

21 Forensic Economist, the American Rehabilitation

22 Economics Association, the Collegium of Pecuniary

23 Damages Expert, American --

24 Q American Board of Forensic Accounting?

25 A No. It's AAEFE, A-A-E-F-E. It's the -- I 02:08

1 think it's the American Association of Economic and 02:09
2 Financial Experts.

3 Q Tell me if you subscribe to this, this
4 ethical scripture that I'm going to quote for you
5 that, quote, "I shall avoid conflict of advocacies." 02:09
6 Close quote. Do you agree with that?

7 MS. FRIEMAN: Objection; incomplete
8 hypothetical, vague and ambiguous.

9 THE WITNESS: I don't think you're
10 interpreting that in the right context. I think 02:09
11 that means --

12 MR. GLICKMAN: I'm not interpreting, I'm
13 just reading it.

14 THE WITNESS: I think from the
15 professional associations I belong to, it just means 02:09
16 that you don't formulate a conclusion before you go
17 through the necessary steps. You don't advocate for
18 one side versus another.

19 BY MR. GLICKMAN:

20 Q Okay. So -- and then you know that 02:10

21 Ms. Inouye was contacted by Mr. Sweeney before you
22 were contacted on this case; right?

23 A I do now.

24 Q How did you learn that?

25 A I believe she indicated that to me. 02:10

1 Q When did she indicate that to you? 02:10

2 A I can't recall.

3 Q Before you were retained on this case?

4 A It's a possibility that it could have been

5 before I was retained on this case. 02:10

6 Q Because you've worked with me obviously

7 over the years; right?

8 A Yes.

9 Q And you've worked with Mr. Sweeney, I

10 think, as well? 02:10

11 A I have.

12 Q And Ms. Inouye has also worked with

13 Mr. Sweeney, I believe?

14 A True.

15 Q And do you have a custom and practice of 02:10

16 discussing with Ms. Inouye cases that she's

17 contacted on or you're contacted on?

18 A Not particularly. I think your expert

19 could attest to the relationship that -- that

20 Ms. Inouye and I have within this firm. It's not 02:11

21 one where we actively discuss things.

22 Q Tell me, though, how did it come up that

23 Ms. Inouye discussed with you that she had been

24 contacted by Mr. Sweeney regarding this case?

25 A That -- boy. Well, she obviously 02:11

1 mentioned it to me, but I don't know the detail. I 02:11

2 can't remember the details.

3 Q Do you remember anything that Ms. Inouye

4 told you about her contact with Mr. Sweeney?

5 A She told me that Mr. Sweeney contacted her 02:11

6 with respect to participating as an expert in this

7 case. She indicated to me at that time she turned

8 him down, but she indicated to him that she would

9 contact me and ask me if I would participate as his

10 expert in this case. 02:12

11 Q Okay. And so did that -- that's what she

12 was doing then, she was following up and contacting

13 you to see if you would be an expert for

14 Mr. Sweeney?

15 A She attempted to contact me, but I don't 02:12

16 believe that we spoke. And then Mr. Sweeney called

17 her back, she indicated to him based on her

18 recollection that she didn't have any news to tell

19 him whether I'm in or out of the case because she

20 and I hadn't spoken. Then he indicated to her never 02:12

21 mind and that's when I suppose he retained

22 Mr. Garcia.

23 Q So you were retained in this case after

24 Mr. Garcia's deposition was noticed, I believe?

25 A If you say so. I'm not familiar -- 02:13

1 Q Well -- 02:13

2 A I'm not familiar with the dates.

3 Q Are you able to tell us when you were
4 retained in this case?

5 A Did you receive my file? 02:13

6 Q I did, but too much stuff for me to look
7 through. Are you able to tell?

8 A Not without looking at it. I'm sure it
9 would be --

10 Q Well, the first billing I saw was that you 02:13
11 reviewed Mr. Garcia's Rule 26 report and you
12 formulated questions for Mr. Altura for the
13 deposition?

14 A Yeah, but that doesn't mean that's the
15 date in which I was retained. 02:13

16 Q Right. But do you think was your first --
17 your first real work on the case was reviewing
18 Mr. Garcia's Rule 26 report?

19 A Yeah, that would be the first real work I
20 did on the case, correct. 02:14

21 Q Okay. Do you recall that you were
22 retained sometime in advance of that? I'm not sure
23 that the County knew that we had retained anybody --
24 a forensic economist until we designated Mr. Garcia.

25 A Well, if you say so. That's outside my 02:14

1 conclusions and opinions. 02:18

2 Q Okay. So if I ask do you anticipate
3 testifying about anything at the time of trial
4 that's not within your report, is there anything
5 else? 02:18

6 A No.

7 Q And what did you discuss with Ms. Frieman
8 the other day?

9 A She discussed with me securing my file so
10 that she could forward it to you. 02:18

11 Q Anything of substance?

12 A No.

13 Q What about with Mr. Ivie?

14 A I discussed things of substance with him.

15 Q And tell me what you discussed of 02:19
16 substance with Mr. Ivie?

17 A I discussed the conclusions that were in
18 my report.

19 Q Okay. Have you worked more with me or
20 more with Mr. Ivie's firm? 02:19

21 A That's a great question. I don't have my
22 outlet -- I mean, my QuickBooks here.

23 Q What's your best guess?

24 A Probably with Mr. Ivie's firm because it's
25 so many attorneys there. I mean, I've worked with 02:19

1 all the partners there. 02:19

2 Q Okay. Is your clock wrong that's over
3 your shoulder?

4 A It is. You're not supposed to see that.

5 Q No, I was thinking that I've gone negative 02:19
6 an hour on the deposition here or something.

7 Okay. Is there anything else you think I
8 should know before we conclude the deposition?

9 A I don't think so.

10 Q Do you think Davida is thinking that this 02:20
11 was like a goofy deposition or what?

12 A I honestly was thinking "I wonder why he
13 is taking my deposition."

14 Q I haven't seen you since the pandemic.
15 Come on. 02:20

16 A That's not true. I did a deposition for
17 you.

18 Q Did we see each other?

19 A Yeah.

20 Q We did, on the Soto case. 02:20

21 A Yes.

22 Q Great. That was supposed to be -- by the
23 way, that was going to be the first civil jury trial
24 during the pandemic and then we settled on the day
25 we were going to set out. 02:20

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